

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

)	
UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No.: 99-1180-JTM
v.)	
)	
AMR CORPORATION,)	
AMERICAN AIRLINES, INC., and)	
AMR EAGLE HOLDING)	
CORPORATION,)	
)	
<i>Defendants.</i>)	
-----)	

**DECLARATION OF CRAIG W. CONRATH IN SUPPORT
OF PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION
TO COMPEL DOCUMENTS RESPONSIVE TO AMERICAN’S
FIRST AND SECOND REQUESTS FOR DOCUMENTS**

I, Craig W. Conrath, declare as follows:

1. I am the lead lawyer for the United States in the above-captioned litigation. I submit this declaration in support of the United States’ Opposition to Defendants’ Motion to Compel.

2. On October 23, 1998, the United States filed suit against Northwest Airlines Corp. (“Northwest”) and Continental Airlines, Inc. (“Continental”) in the United States District Court for the Eastern District of Michigan. In its suit, the United States seeks to enjoin Northwest’s purchase of a controlling interest in Continental. A true and correct copy of the Complaint filed in *United States v. Northwest Airlines, Corp., et al* (“NW/CO”) is attached as Exhibit 1. This complaint does not include

any claims alleging violations of Section 2 of the Sherman Act, 15 U.S.C. § 2 (relating to monopolization); rather, *NW/CO* involves alleged violations of Section 7 of the Clayton Act (15 U.S.C. § 18) (relating to mergers and acquisitions) and Section 1 of the Sherman Act (15 U.S.C. § 1) (relating to anticompetitive agreements). *NW/CO does not involve* any allegations of predatory conduct by either Northwest or Continental, nor does it involve any other claim of monopolization or attempted monopolization of a hub by either Northwest or Continental.

3. On June 7, 1999, Judge Denise Page Hood of the United States District Court for the Eastern District of Michigan entered a Protective Order pursuant to Fed. R. Civ. P. 26(c)(7) in *NW/CO*. A true and correct copy of that Protective Order is attached as Exhibit 2.

4. American received a subpoena in *NW/CO*. American's counsel participated in a May 3, 1999, hearing on the United States' motion for entry of the *NW/CO* Protective Order. A true and correct copy of the transcript from that hearing is attached as Exhibit 3. American's participation is set forth beginning at page 38.

5. Contrary to American's claims, the United States has never told American that it would invoke the "notice" procedures under the *NW/CO* Protective Order, as suggested by American. Rather, once American made clear in the meet-and-confer process that it expected the United States to proceed by invoking the "notice" procedures, we agreed to confer with the Division staff working on the *NW/CO* case regarding whether that process would be consistent with Judge Hood's Protective Order. The response we received to that inquiry was a resounding "no."

6. In our discussion of the *NW/CO* documents with American's counsel, we explained that we

would not oppose a motion by them to modify Judge Hood's *NW/CO* Protective Order to permit American to have access to the documents at issue. A letter stating this position was sent to Edward Soto, counsel for American, on February 28, 2000. A true and correct copy of this letter is attached as Exhibit 4. The letter also suggests that American can proceed by obtaining permission for disclosure from the owners of the documents at issue.

7. During discussions with American's counsel concerning documents whose disclosure is restricted by the CID statute, we identified *United States v. AT&T*, 86 F.R.D. 603 (D.D.C. 1980) as the source of the principles we were applying. When American's counsel suggested some question about whether *AT&T* established the appropriate standard, we invited them to identify any other authority that they believed established the relevant standard. They did not do so in that conversation, nor have they done so since.

8. The United States initially opened an investigation into allegations that American monopolized routes emanating from its Dallas-Fort Worth hub by means of predatory practices directed at low-cost carriers. Only later did the United States begin to investigate other airlines' alleged predatory practices to monopolize other hubs. When these other investigations were begun, "add-on clearance" was obtained under the same matter number, as detailed in the Declaration of John M. Nannes, ¶8. I explained this fact to American counsel in our meet-and-confer process, including in a letter of February 16, 2000 to Edward Soto. A true and correct copy of this letter is attached as Exhibit 5.

9. It is not unusual for the Antitrust Division of the Department of Justice to investigate several similar possible violations under a single "matter number," and for such investigations to lead to the filing

of separate cases. Under the matter number applicable to airline predation, the Division is investigating possible predatory conduct by airlines other than American and concerning possible monopolization of hubs other than DFW.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

“/s/”

Craig W. Conrath

Executed on this 14th day of March, 2000.